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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD TUSO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZILLOW GROUP INC., a
Washington registered corporation,

Defendant,

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Richard Tusó (“Plaintiff Tusó” or “Tusó”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Zillow Group Inc. (“Defendant” or “Zillow”) to stop the Defendant from violating the Telephone Consumer Protection Act (“TCPA”) by making telemarketing calls to consumers without consent including calls to phone numbers that are registered on the National Do Not Call registry (“DNC”) and to consumers who have expressly requested that

1 the calls stop. Plaintiff also seeks injunctive and monetary relief for all persons
2 injured by Defendant's conduct. Plaintiff Tusó, for this Complaint, alleges as follows
3 upon personal knowledge as to himself and his own acts and experiences, and, as to
4 all other matters, upon information and belief, including investigation conducted by
5 his attorneys.

7 **PARTIES**

8
9 1. Plaintiff Tusó is a resident of Roseville, California.

10 2. Defendant Zillow is a corporation registered in Seattle, Washington.
11 Defendant Zillow conducts business throughout this District and throughout the US,
12 including Illinois.

14 **JURISDICTION AND VENUE**

15 3. This Court has federal question subject matter jurisdiction over this
16 action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
17 Protection Act, 47 U.S.C. §227 ("TCPA").

18
19 4. This Court has personal jurisdiction over the Defendant because the
20 Defendant transacts business in this District and sends telecommunication messages
21 to consumers located in this District.

22
23 5. Venue is proper in this District under 28 U.S.C. § 1391(b) because
24 Defendant has its headquarters in this District and the wrongful conduct giving rise
25 to this case was directed from this District.

INTRODUCTION

6. As the Supreme Court explained at the end of its term this year, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” *Barr v. Am. Ass’n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at *5 (U.S. July 6, 2020).

7. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

8. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

9. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

10. According to online robocall tracking service “YouMail,” 4.5 billion robocalls were placed in April 2023 alone, at a rate of 151.6 million per day. www.robocallindex.com (last visited May 7, 2023).

11. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and

232,000 complaints in 2018. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data.

12. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC chairman.¹

13. “The FTC receives more complains about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).²

COMMON ALLEGATIONS

14. Zillow operates a popular website whereby consumers can search for real estate listings on Zillow’s website.

15. Zillow traditionally made a significant portion of its revenue from real estate professionals who pay for connections and leads in a specific geographic area. This includes agents who pay to be a Zillow Premier Agent,³ which allows them to

¹ <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

² https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf

³ <https://www.zillow.com/premier-agent/solutions/real-estate-broker/>

1 be featured prominently in the zip codes they choose when consumers search for
2 agent or view property listings in those areas.

3 16. Recently Zillow launched its Zillow Flex model whereby instead of real
4 estate agents paying Zillow for leads generated by Zillow from a certain zip code, in
5 this new model, Zillow partners up with real estate agents and gives them the leads
6 at no cost in exchange for receiving a “success fee” from the agent’s commission
7 upon the completion of a successful transaction.⁴ This is one way Zillow is exploring
8 making more money per lead it generates.
9

10 17. To this end, Zillow places solicitation calls and sends solicitation text
11 messages to consumers on its behalf to solicit real estate transactions. In addition,
12 Zillow reaches out to consumers to connect them with real estate brokers they have
13 a relationship with.
14

15 18. Unfortunately, some of these calls and text messages from Zillow are
16 being placed to consumers without consent, including to consumers that registered
17 their phone numbers on the DNC, as per Plaintiff’s experience.
18

19 19. To make matters worse, Zillow lacks a sufficient opt-out system to
20 ensure that a consumer who notifies Zillow to stop calling or texting them, will
21 be removed from their calling and texting list.
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27 ⁴ <https://www.zillow.com/premier-agent/flex-faq/>

1 20. In response to these calls and text messages, Plaintiff Tusó brings
2 forward this case seeking injunctive relief requiring the Defendant to cease from
3 violating the TCPA, as well as an award of statutory damages to the members of the
4 Classes and costs.
5

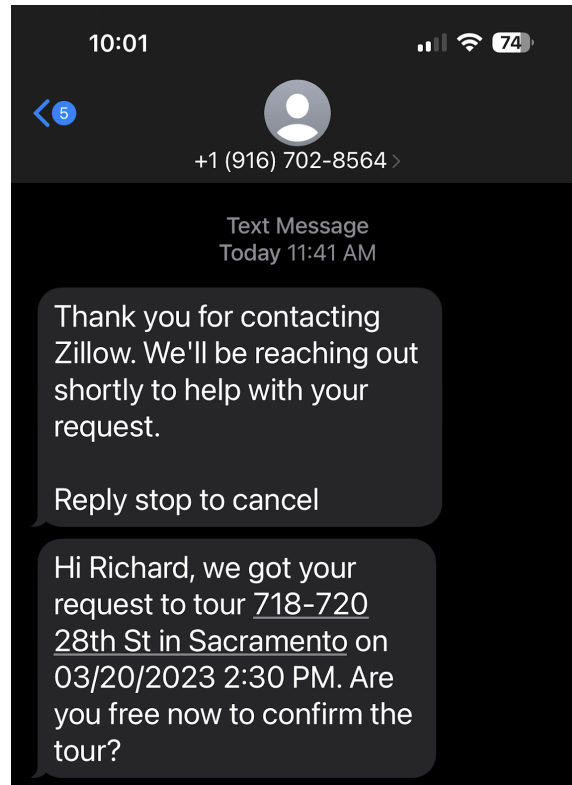
6 **PLAINTIFF TUSO'S ALLEGATIONS**

7 21. Plaintiff Tusó registered his cell phone number on the DNC on July 2,
8 2003.
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10 22. Plaintiff Tusó uses his cell phone number for personal use only as one
11 would use a landline telephone number in a home.
12

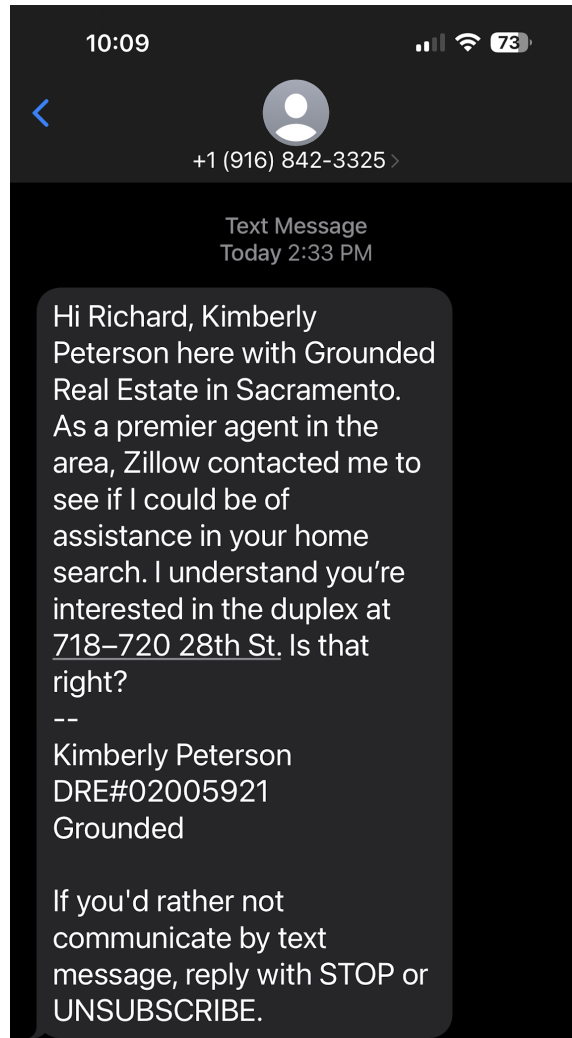
13 23. The calls and text messages that Plaintiff Tusó received from Defendant
14 Zillow were all received more than 31 days after Plaintiff registered his cell phone
15 number on the DNC.
16

17 24. Plaintiff Tusó received 2 unsolicited text messages from Defendant
18 Zillow on March 23, 2023 at 11:41 AM regarding an inquiry to view a property,
19 from 916-702-8564, to his cell phone number:
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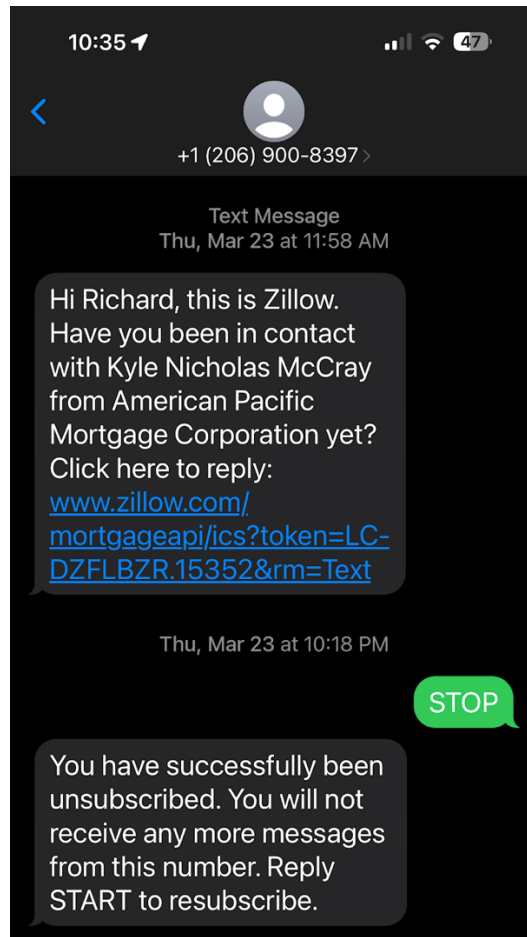


25. On March 20, 2023 at 12:11 PM, Plaintiff Tusó received an unsolicited call from a Zillow employee named Louis, from 916-702-8564 to his cell phone. The call was regarding an inquiry to view a property. Plaintiff told Louis that he did not make any inquiries regarding any properties. He then explained that he should not be receiving any solicitations from Zillow.

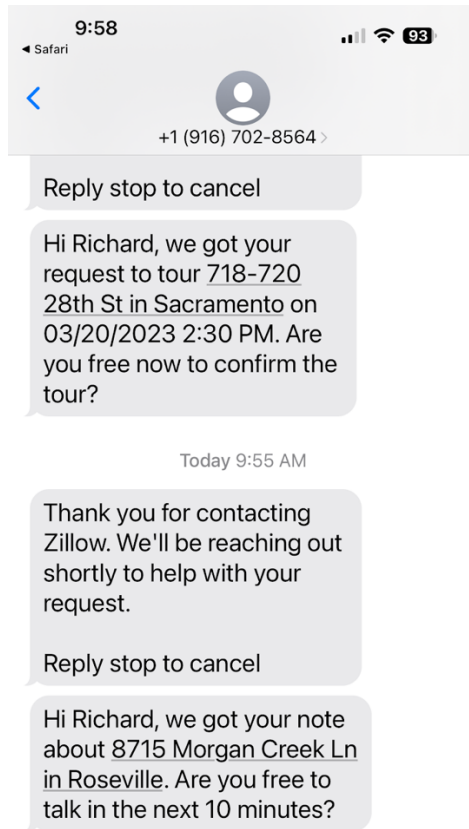
26. Plaintiff Tusó then received another solicitation text message about a property on March 20, 2023 at 2:33 from a real estate agent who received his contact information from Zillow, from phone number 916-842-3325 to his cell phone:



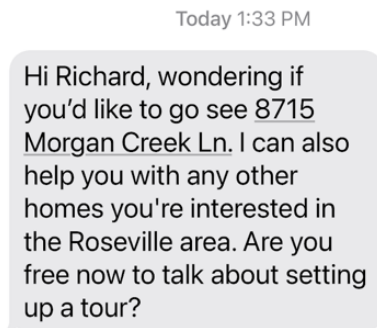
27. Despite his opt-out request, Plaintiff Tusso received an unsolicited text message from Defendant Zillow on March 23, 2023 at 11:58 AM, from 206-900-8397 to his cell phone. Plaintiff replied "STOP" on March 23, 2023 at 10:18 PM and received confirmation that he had been unsubscribed from Zillow text messages:



28. Again, despite his opt-out requests, Plaintiff Tusso received 2 more unsolicited text messages from Defendant Zillow on April 25, 2023, both at 9:55 AM from 916-702-8564 to his cell phone:



29. On April 26, 2023 at 1:33 PM, Plaintiff Tusó received yet another unsolicited text message from Defendant Zillow, again from 916-702-8564 to his cell phone:



30. On April 26, 2023 at 4:28 PM, Plaintiff Tusó received an unsolicited phone call to his cell phone from Defendant Zillow, from 916-702-8564. This call

1 was from an employee named Alex who stated that he was calling from Zillow on a
2 recorded line about a property inquiry. Plaintiff Tusó told Alex that he did not fill
3 out anything on Zillow's website and said that he should not be receiving any phone
4 calls and texts.
5

6 31. Plaintiff Tusó has never done business with Zillow.
7

8 32. Plaintiff Tusó was not looking to buy or sell a property and was not
9 looking to view any properties.

10 33. The unauthorized solicitation telephone calls and text messages that
11 Plaintiff received from or on behalf of Defendant Zillow have harmed Plaintiff Tusó
12 in the form of annoyance, nuisance, and invasion of privacy, occupied his phone
13 line, and disturbed the use and enjoyment of his phone.
14

15 34. The calls also caused undue distress as Plaintiff was unable to get the
16 calls/texts to stop by asking Zillow to stop calling/texting his cell phone number.
17

18 35. Seeking redress for these injuries, Plaintiff Tusó, on behalf of himself
19 and Classes of similarly situated individuals, brings suit under the TCPA.
20

21 CLASS ALLEGATIONS

22 36. Plaintiff Tusó brings this action pursuant to Federal Rules of Civil
23 Procedure 23(b)(2) and 23(b)(3) and seeks certification of the following Classes:
24

25 **Do Not Call Registry Class:** All persons in the United States who from
26 four years prior to the filing of this action through class certification (1)
27 Zillow called and/or texted more than one time, (2) within any 12-month

1 period, (3) where the person's residential telephone number had been
2 listed on the National Do Not Call Registry for at least thirty days, (4)
3 for substantially the same reason Defendant called Plaintiff.

4 **Internal Do Not Call Class:** All persons in the United States who from
5 four years prior to the filing of this action through class certification (1)
6 Defendant Zillow called or texted more than one time on their residential
7 telephone number, (2) within any 12-month period (3) for substantially
8 the same reason Defendant called Plaintiff, (4) including at least once
9 after the person requested that they stop calling/texting.

10 37. The following individuals are excluded from the Classes: (1) any Judge
11 or Magistrate presiding over this action and members of their families; (2)
12 Defendant, its subsidiaries, parents, successors, predecessors, and any entity in
13 which either Defendant or their parents have a controlling interest and their current
14 or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons
15 who properly execute and file a timely request for exclusion from the Classes; (5)
16 the legal representatives, successors or assigns of any such excluded persons; and
17 (6) persons whose claims against the Defendant have been fully and finally
18 adjudicated and/or released. Plaintiff Tusio anticipates the need to amend the Class
19 definition following appropriate discovery.
20

21 38. **Numerosity and Typicality:** On information and belief, there are
22 hundreds, if not thousands of members of the Classes such that joinder of all
23 members is impracticable, and Plaintiff is a member of the Classes.
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1 39. **Commonality and Predominance:** There are many questions of law
2 and fact common to the claims of the Plaintiff and the Classes, and those questions
3 predominate over any questions that may affect individual members of the Classes.
4 Common questions for the Classes include, but are not necessarily limited to the
5 following:
6

- 7 (a) Whether Defendant's conduct violated the TCPA;
8
9 (b) Whether Defendant placed multiple calls/text messages within a 12-
10 month period to Plaintiff and other consumers whose telephone
11 numbers were registered with the DNC for at least 30 days of the time
12 of each call/text message;
13
14 (c) whether Defendant engaged in telemarketing without implementing
15 adequate internal policies and procedures for maintaining an internal
16 do not call list;
17
18 (d) whether members of the Classes are entitled to treble damages based
19 on the willfulness of Defendant's conduct.
20

21 40. **Adequate Representation:** Plaintiff Tusó will fairly and adequately
22 represent and protect the interests of the Classes, and has retained counsel competent
23 and experienced in class actions. Plaintiff Tusó has no interests antagonistic to those
24 of the Classes, and the Defendant has no defenses unique to Plaintiff. Plaintiff Tusó
25 and his counsel are committed to vigorously prosecuting this action on behalf of the
26

1 members of the Classes, and have the financial resources to do so. Neither Plaintiff
2 Tuso nor his counsel have any interest adverse to the Classes.

3 41. **Appropriateness:** This class action is also appropriate for certification
4 because the Defendant has acted or refused to act on grounds generally applicable
5 to the Classes and as a whole, thereby requiring the Court's imposition of uniform
6 relief to ensure compatible standards of conduct toward the members of the Classes
7 and making final class-wide injunctive relief appropriate. Defendant's business
8 practices apply to and affect the members of the Classes uniformly, and Plaintiff's
9 challenge of those practices hinges on Defendant's conduct with respect to the
10 Classes as wholes, not on facts or law applicable only to Plaintiff Tuso. Additionally,
11 the damages suffered by individual members of the Classes will likely be small
12 relative to the burden and expense of individual prosecution of the complex litigation
13 necessitated by Defendant's actions. Thus, it would be virtually impossible for the
14 members of the Classes to obtain effective relief from Defendant's misconduct on
15 an individual basis. A class action provides the benefits of single adjudication,
16 economies of scale, and comprehensive supervision by a single court.

22 **FIRST CLAIM FOR RELIEF**
23 **Telephone Consumer Protection Act**
24 **(Violation of 47 U.S.C. § 227)**
25 **(On Behalf of Plaintiff Tuso and the Do Not Registry Class)**

26 42. Plaintiff repeats and realleges the prior paragraphs of this Complaint

1 and incorporates them by reference herein.

2 43. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c),
3 provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a]
4 residential telephone subscriber who has registered his or his telephone number on
5 the national do-not-call registry of persons who do not wish to receive telephone
6 solicitations that is maintained by the federal government."
7

8 44. Any "person who has received more than one telephone call within any
9 12-month period by or on behalf of the same entity in violation of the regulations
10 prescribed under this subsection may" may bring a private action based on a
11 violation of said regulations, which were promulgated to protect telephone
12 subscribers' privacy rights to avoid receiving telephone solicitations to which they
13 object. 47 U.S.C. § 227(c).
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17 45. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to
18 be initiated, telephone solicitations to telephone subscribers such as Plaintiff Tusó
19 and the Do Not Call Registry Class members who registered their respective
20 telephone numbers on the National Do Not Call Registry, a listing of persons who
21 do not wish to receive telephone solicitations that is maintained by the federal
22 government.
23
24

25 46. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff Tusó and
26 the Do Not Call Registry Class received more than one telephone call/text message
27

1 in a 12-month period made by or on behalf of the Defendant in violation of 47 C.F.R.
2 § 64.1200, as described above.

3 47. As a result of Defendant's conduct as alleged herein, Plaintiff Tusó and
4 the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C.
5 § 227(c), are entitled, inter alia, to receive up to \$500 in damages for such violations
6 of 47 C.F.R. § 64.1200.
7

8 48. To the extent Defendant's misconduct is determined to be willful and
9 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of
10 statutory damages recoverable by the members of the Do Not Call Registry Class.
11

12
13 **SECOND CLAIM FOR RELIEF**
14 **Telephone Consumer Protection Act**
15 **(Violation of 47 U.S.C. § 227)**

16 **(On Behalf of Plaintiff Tusó and the Internal Do Not Call Class)**

17 49. Plaintiff repeats and realleges paragraphs 1 through 41 of this
18 Complaint and incorporates them by reference herein.

19 50. Under 47 C.F.R. § 64.1200(d), "[n]o person or entity shall initiate any
20 call for telemarketing purposes to a residential telephone subscriber unless such
21 person or entity has instituted procedures for maintaining a list of persons who
22 request not to receive telemarketing calls made by or on behalf of that person or
23 entity. The procedures instituted must meet the following minimum standards:
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25
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1 (1) Written policy. Persons or entities making calls for
2 telemarketing purposes must have a written policy, available
upon demand, for maintaining a do-not-call list.

3 (2) Training of personnel engaged in telemarketing. Personnel
4 engaged in any aspect of telemarketing must be informed and
trained in the existence and use of the do-not-call list.

5 (3) Recording, disclosure of do-not-call requests. If a person or
6 entity making a call for telemarketing purposes (or on whose
7 behalf such a call is made) receives a request from a residential
8 telephone subscriber not to receive calls from that person or
9 entity, the person or entity must record the request and place the
10 subscriber's name, if provided, and telephone number on the do-
11 not-call list at the time the request is made. Persons or entities
12 making calls for telemarketing purposes (or on whose behalf
13 such calls are made) must honor a residential subscriber's do-not-
14 call request within a reasonable time from the date such request
15 is made. This period may not exceed thirty days from the date of
16 such request. If such requests are recorded or maintained by a
17 party other than the person or entity on whose behalf the
18 telemarketing call is made, the person or entity on whose behalf
the telemarketing call is made will be liable for any failures to
honor the do-not-call request. A person or entity making a call
for telemarketing purposes must obtain a consumer's prior
express permission to share or forward the consumer's request
not to be called to a party other than the person or entity on whose
behalf a telemarketing call is made or an affiliated entity.

19 (4) Identification of sellers and telemarketers. A person or entity
20 making a call for telemarketing purposes must provide the called
21 party with the name of the individual caller, the name of the
22 person or entity on whose behalf the call is being made, and a
23 telephone number or address at which the person or entity may
24 be contacted. The telephone number provided may not be a 900
number or any other number for which charges exceed local or
long distance transmission charges.

25 (5) Affiliated persons or entities. In the absence of a specific
26 request by the subscriber to the contrary, a residential
27 subscriber's do-not-call request shall apply to the particular
28 business entity making the call (or on whose behalf a call is

made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

51. Defendant placed calls/text messages to Plaintiff and members of the Internal Do Not Call Class without implementing internal procedures for maintaining a list of persons who request not to be called by the entity and/or by implementing procedures that do not meet the minimum requirements to allow Defendant to initiate telemarketing calls/text messages.

52. The TCPA provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

53. Defendant has, therefore, violated 47 U.S.C. § 227(c)(5). As a result of Defendant’s conduct, Plaintiff and the other members of the Internal Do Not Call Class are each entitled to up to \$1,500 per violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiff as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of money damages and costs;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Tusso requests a jury trial.

RICHARD TUSO, individually and on
behalf of all others similarly situated,

DATED this 22nd day of May, 2023.

By: /s/ Rachel E. Kaufman

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Classes*